

April 15, 1999

H 1087. STATE ETHICS ACT. TO ESTABLISH THE STATE ETHICS ACT, TO CREATE THE STATE ETHICS COMMISSION, TO ESTABLISH ETHICAL STANDARDS FOR STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS, TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS, TO PROVIDE FOR ETHICS EDUCATION, TO MAKE CONFORMING CHANGES, AND TO MAKE AN APPROPRIATION THEREFOR. Adds new GS Ch. 138A, State Ethics Act, applicable to "public servants," defined by act to include all state constitutional officers, all employees of Governor's office, all heads of all principal state agencies who are appointed by the Governor, the chief deputy or chief administrative assistant of each of the statewide elected public officials and heads of all principal state agencies, all confidential assistants and secretaries to the agency and department heads as defined in GS 126-5(c)(2), all employees in policy-making positions designated by the Governor pursuant to GS 126-5(b) and all their confidential secretaries, any other employees or appointees in the principal state agencies as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act, and all members appointed to state executive branch boards, commissions, and councils. Also includes, for UNC, members of Board of Governors, president, vice-presidents, chancellors, vice-chancellors, and members of boards of trustees of constituent institutions. For Dep't of Community Colleges, includes members of State Board of Community Colleges, President of NC Community College System, president or chief administrative officer of each college, and members of each college's board of trustees. Does not include, when serving in the designated capacity, judges and justices of the General Court of Justice, members of boards, commissions, or councils having solely advisory powers and not exercising any executive, quasi-judicial, or quasi-legislative powers, and members and employees of the General Assembly.

Act forbids public servants to knowingly use public position for direct or indirect financial gain of servant, his or her immediate family (spouse and minor children), or business with which servant is associated; specifies exceptions, and forbids public servants to mention or permit another to mention servant's position in commercial advertising. Forbids knowingly asking for or receiving gifts in return for being influenced in discharge of servant's responsibilities, and soliciting or receiving compensation other than that received from state for advice or assistance given in the course of carrying out the servant's duties. Places specified limits on honoraria. Limits use of information gained through official responsibilities for private gain, and requires public servants to make every effort to avoid even the appearance of a conflict of interest, defined to exist when a reasonable person would conclude from the circumstances that the servant's ability to protect the public interest, or perform public duties, is compromised by personal interest. Requires public servants to continually monitor their affairs to ensure absence of conflicts of interest and appearances of conflicts, and creates duty to inquire of State Ethics Comm'n (see below) if servant believes a potential for conflict or appearance of a conflict exists.

Forbids public servants knowingly to participate in official actions by their employing entity requiring the exercise of discretion if they, their spouse or minor children, or a business with which they are associated (specifically defined in bill) have a pecuniary interest in or a reasonably foreseeable benefit from the matter under consideration, what would impair the servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the servant's participation in the action. Specifies that a potential benefit includes a detriment to a business competitor to the servant, immediate family, or business with which associated. Allows participation if they will receive no greater benefit than all members of a profession, occupation, or large class, where the official action affects the servant's compensation and allowances as a public servant, where the servant has gotten authorization from either the Ethics Comm'n or his employing entity, where the action is ministerial only, or where without the servant's participation either a public body will not have a quorum, or there will be no one to act, and that fact is appropriately noted. Act also forbids specified types of nepotism.

Requires public servants to file statements of economic interest. Statements, along with written evaluations of them by Ethics Comm'n, are public records except for those filed by prospective public servants prior to the time that they are appointed or employed by the state. Statements, once public, must be made available for public inspection and copying by any person during normal business hours at the Comm'n's office. Statement must be on form prescribed by

Comm'n and must be sworn to by public servant. It must at least include name, home address, occupation, employer, and business of public servant, a list of each asset and liability of servant with a value of at least \$10,000 (statute lists in detail what this includes), any other information that a reasonable person would conclude is necessary either to carry out purposes of act or to fully disclose any potential conflict of interest or appearance of conflict; if servant is unsure, he must consult Comm'n. Servant must make sworn certification that statement is true, correct, and complete, and that he has not and will not transfer any asset, etc., to conceal it from disclosure. Comm'n must evaluate each statement and send copies to specified individuals.

Creates State Ethics Comm'n, composed of seven members appointed by Governor for three-year terms (once staggering is implemented). Comm'n members may not hold or be candidates for other public offices, hold office in political parties, participate in or contribute to political campaigns of candidates, serve on state boards, etc., or be state employees. Provides for organization and staffing of Comm'n, including hiring Executive Director.

Among Comm'n's powers, it may conduct investigations of alleged violations of act of rules Comm'n adopts, or of the criminal law by a public servant in the performance of his official duties, either on its own motion or in response to a signed and sworn complaint of any individual filed with the Comm'n. Public servants must cooperate with the Comm'n, subject to sanctions specified in act. Complaints are confidential unless Comm'n decides to proceed with an investigation into an individual's conduct. Written notice of investigation will be given to person who filed the complaint and to the public servant. Provides for public hearing. Public servant has rights to call and cross-examine witnesses, present evidence, be represented by counsel, etc. Comm'n may dispose of a complaint by referring it to the Attorney General if it finds substantial evidence of a violation of a criminal statute; issuing a public admonishment or referring the matter to the employing entity or both; or dismissing the complaint. Comm'n will render formal and binding opinions of its findings and recommendations.

Comm'n may also issue advisory opinions, with prospective application only, on specific questions involving governmental ethics at the request of public servants, their supervisors, or the public. Requests must be in writing and relate to real or reasonably anticipated fact settings or circumstances. Reliance on such an opinion on a specific matter immunizes the public servant on that matter from investigation by the Comm'n and any adverse action by the employing entity. Comm'n may also authorize its staff to issue such opinions.

Comm'n must develop an ethics education program as specified in act. Some of responsibility for program is placed on state agencies, included designation of an agency ethics liaison to maintain active communication with Comm'n and development of in-house educational programs. Among Comm'n publications required by act are a newsletter with copies of Comm'n's opinions, policies, procedures, and interpretive bulletins, and a compilation of relevant State law setting forth ethical standards applicable to public servants, including the text of act, Comm'n policies and procedures, and any other ethics-related information Comm'n thinks should be included.

Specifies that violation of act by a public servant is grounds for disciplinary action, and specifies appropriate actions depending on type of position held by servant. Authorizes Comm'n to seek to enjoin violations of provision requiring public servants to make every effort to avoid even the appearance of a conflict of interest.

Exempts Comm'n from Open Meetings Law and from APA, except for judicial review provisions and new provisions concerning publication of its rules and advisory opinions. Transfers authority, etc., records, personnel, appropriations, etc., of NC Board of Ethics of the Office of the Governor to Comm'n.

Appropriates \$253,821 from General Fund to Dep't of Administration for 1999-2000 to fund Comm'n. Transfer and appropriation become effective July 1, 1999. Remainder of bill becomes effective Jan. 1, 2000.

Intro. by Wood.

Ref. to Ethics

GS 138A, 143, 150B, APPROP